

Subchapter Q

§330.701. Definitions.

The words and terms used in this undesignated head have the meanings as given in the Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361, or the regulations promulgated thereunder. Unless specifically defined in the Solid Waste Disposal Act or the regulations promulgated thereunder, the terms used in this undesignated head have the meanings commonly ascribed to them in the field of air pollution control. The term "facility" as used in this undesignated head refers to a solid waste facility as defined in the Solid Waste Disposal Act. The use of the term "modified" in this undesignated head is consistent with the term "modification" as defined in the Texas Clean Air Act.

§330.702. Applicability.

(a) Except as provided in subsection (b) of this section and 31 TAC §116.6 concerning exempted facilities, this undesignated head applies to all municipal solid waste facilities which are required to obtain a permit from the Texas Department of Health (TDH) pursuant to the authority of the Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361. For the purposes of this undesignated head, a "municipal solid waste facility unit that burns or incinerates solid waste" shall not include a facility unit that burns or incinerates gas that may be produced by the decay of solid waste at a municipal solid waste facility.

(b) Any person who plans to construct or engage in the modification of a municipal solid waste facility shall also obtain authorization for such construction or modification under 31 TAC Chapter 116 concerning control of air pollution by permits for new construction or modification, if the proposed construction or modification is subject to new source review requirements of the Federal Clean Air Act, Title 1, Part C or D, 42 United States Code, 7401 et seq., for a major source or a major modification.

(c) New or modified municipal solid waste facilities which are not required to obtain a permit from the TDH and which may emit air contaminants into the air of this state must obtain authorization from the Texas Air Control Board (TACB) pursuant to the requirements of 31 TAC Chapter 116 concerning control of air pollution by permits for new construction or modification.

§330.703. Permit Conditions.

Permits for facilities to which this undesignated head apply may contain terms and conditions relating to air quality. The holders of such permits shall comply with all such terms and conditions.

§330.704. Representations in Applications for Permits.

All representations in an application for a Texas Department of Health (TDH) permit or a modification to a TDH permit regarding construction plans and operation procedures, become conditions upon which a permit is issued. It shall be unlawful for any person to vary from such representations if the change will cause a change in the method of control of emissions, the character of

the emissions, or will result in an increase in the discharge of the various emissions, unless prior notification is made to the TDH and such change is approved. Such person shall submit information as may be reasonably required to determine whether such activity will comply with the applicable regulations and whether such change may be approved. Any information provided under this subsection shall be submitted to the permitting authority in duplicate form.

§330.705. Responsibility for Review of Air Quality Impacts from Municipal Solid Waste Facility Units That Burn or Incinerate Solid Waste.

(a) Technical review. The Texas Air Control Board (TACB) shall be responsible for performing a technical review of the air quality aspects of any permit application submitted to the Texas Department of Health (TDH) for a municipal solid waste facility unit that burns or incinerates solid waste. TACB shall complete such review and shall forward all recommendations or proposed permit provisions to TDH within time limits established for completion of technical review of the application. Normally, TDH shall incorporate into its proposed action all recommendations or proposed permit provisions submitted by TACB. If TACB's proposed permit provisions conflict with provisions proposed by TDH technical staff, the staffs of the two agencies shall attempt to resolve such conflict prior to the end of the technical review of the application.

(b) Uncontested permit applications. If a contested case hearing is not held by TDH, all recommendations and proposed permit provisions submitted by TACB, as may be modified to resolve conflicts in accordance with subsection (a) of this section, shall be incorporated into any permit issued by TDH.

(c) Hearings. If a contested case hearing is held by TDH, all evidence and testimony of the state regarding air quality aspects of the application shall be developed and presented by TACB. All parties, including TDH, shall have the right to cross-examine any witnesses of TACB. At the conclusion of the presentation of testimony, TDH shall afford TACB at least 30 days in which to submit proposed findings of fact and conclusions of law, and proposed permit requirements, regarding the air quality aspects of the application. Such proposed findings, conclusions, and permit requirements shall be accepted, unless TDH finds that the recommendations of TACB are not supported by a preponderance of the evidence. TACB may seek judicial review of the air quality aspects of any final decision of TDH.

(d) Enforcement. Both TACB and TDH shall have authority to enforce the terms included in any permit issued by TDH pursuant to these sections.

§330.706. Air Emissions Requirements for Municipal Solid Waste Facility Units That Burn or Incinerate Solid Waste.

In order for a permit to be granted to a municipal solid waste facility unit that burns or incinerates solid waste, the applicant for such a permit shall submit information to the Texas Department of Health (TDH) which will demonstrate that all of the following are met.

(1) The facility will comply with all requirements of the State Solid Waste Disposal Act and the rules promulgated thereunder.

(2) The emissions of air contaminants from each proposed facility will comply with all rules and regulations of the Texas Air Control Board (TACB) (except 31 TAC Chapter 116 concerning control of air pollution by permits for new construction or modification) and with the intent of the Texas Clean Air Act.

(3) The facility will comply with all the requirements of Subchapter E of this chapter (relating to Permit Procedures and Design Criteria) promulgated by TDH pursuant to the Solid Waste Disposal Act.

(4) The emissions from each proposed facility will meet at least the requirements of any applicable new source performance standards promulgated by the United States Environmental Protection Agency (EPA) pursuant to authority granted under the Federal Clean Air Act (FCAA), §111, as amended.

(5) The emissions from each proposed facility will meet at least the requirements of any applicable emission standard for hazardous air pollutants promulgated by the EPA pursuant to authority granted under the FCAA, §112, as amended.

(6) The proposed facility will have appropriate provisions for measuring significant emissions of air contaminants as determined by TACB.

(7) The facility will utilize the best available control technology to control the emissions of air contaminants, with consideration given to the technical practicability and economic reasonableness of reducing or eliminating these emissions.

(8) The proposed facility will achieve the performance specified in the TDH permit application.

§330.721. Adoption by Reference.

(a) The Texas Department of Health adopts by reference the memorandum of understanding among the Texas Department of Health, the Texas Water Commission, and the Railroad Commission of Texas. The memorandum contains the agencies' interpretation of their jurisdiction over wastes associated with oil and gas exploration, production, and refining, and with wastes which result from geothermal resource development activities.

(b) Copies of the memorandum of understanding, are on file with the Texas Department of Health and may be reviewed during regular business hours.

(c) The effective date of the memorandum of understanding is December 1, 1987.

§330.731. Adoption by Reference.

(a) The Texas Department of Health adopts by reference a memorandum of understanding among the Texas Department of Health, the Texas Water Commission, and the Texas Air Control Board. The

memorandum contains the agencies' interpretation of their regulatory jurisdiction over activities related to sludge generated by municipal wastewater treatment plants.

(b) Copies of the memorandum of understanding are on file with the Bureau of Solid Waste Management, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, and may be reviewed during normal business hours.

(c) The effective date of the memorandum of understanding is July 1, 1989.

§330.732. Adoption by Reference.

(a) The Texas Natural Resource Conservation Commission adopts by reference a memorandum of understanding among the Texas Water Commission and the Attorney General of Texas. The memorandum contains the Water Commission's and the Attorney General's interpretation concerning intervention in the civil enforcement process under the Texas Solid Waste Disposal Act.

(b) Copies of the memorandum of understanding are available upon request from the Waste Policy Division, Texas Natural Resource Conservation Commission, P. O. Box 13087, Austin, Texas 78711-3087. (512) 239-6087.

(c) The effective date of the memorandum of understanding is October 9, 1993.

§330.733. Adoption of Memorandum of Understanding by Figure.

(a) The Texas Natural Resource Conservation Commission adopts a memorandum of understanding (MOU) between the Texas Department of Health (TDH) and the Texas Natural Resource Conservation Commission (TNRCC). (Figure 1: 30 TAC §330.733 (a)). The memorandum contains the agreement of the TNRCC to inspect asbestos disposal sites under its jurisdiction for conformance with 40 CFR Part 61, Subpart M, §61.154 and provide copies of inspection and enforcement documentation to the TDH. This effort will support the TDH in the regulation of emissions related to asbestos demolition and renovation activities per 40 CFR Part 61, Subpart M.

(b) Copies of the MOU are available upon request from the Waste Policy Division, Texas Natural Resource Conservation Commission, P. O. Box 13087, Austin, Texas 78711-3087, (512) 239-6087.

(c) The effective date of the MOU is the same as the effective date of the rule amendment adding this section.

§330.735. Memorandum of Understanding between the Texas Natural Resource Conservation Commission and the Texas Department of Health concerning Special Wastes from Health Care Related Facilities.

(a) Authority concerning special wastes from health care related facilities. Texas Natural Resource Conservation Commission and the Texas Department of Health, hereinafter "agencies," agree that pursuant to Texas Water Code, §5.012; Texas Health and Safety Code, Chapter 361; and Texas

Health and Safety Code, §12.001, §12.032, §§81.081-81.092, §142.012, §241.026, §243.009, §244.009, §245.009, §245.010, §694.001, and §773.050, both agencies possess authority regarding special waste from health care related facilities. The agencies also agree that special expertise resides in each agency related to its area of authority and responsibility. The Texas Natural Resource Conservation Commission possesses authority over the treatment, handling, storage, processing and/or disposal of these wastes, including enforcement authority. The Texas Department of Health possesses authority over the approval of methods for the treatment of special waste from health care related facilities, identifying entities that are subject to its approval provisions and the orderly application of its approval provisions to the covered entities.

(b) Understanding concerning special waste from health care related facilities.

(1) The Texas Natural Resource Conservation Commission will:

(A) keep the Texas Department of Health informed of any need to amend the Texas Natural Resource Conservation Commission rules related to special waste from health care related facilities, and, if needed, will work closely with the Texas Department of Health to revise its rules;

(B) inform the Texas Department of Health of all treatment technologies, equipment or processes that fail to meet the Department of Health's Performance Standards;

(C) notify the Texas Department of Health concerning formal enforcement actions that involve treatment technologies, equipment or processes;

(D) allow the Texas Department of Health's approved methods for the treatment of special waste from health care related facilities to be used to process said waste in Municipal Solid Waste Type V facilities;

(E) allow special wastes from health care related facilities that have been treated by a Texas Department of Health approved process to be disposed of at Municipal Solid Waste Type I facilities; and

(F) apply the Texas Department of Health's standards for special waste from health care- related facilities.

(2) The Texas Department of Health will:

(A) keep the Texas Natural Resource Conservation Commission informed of any need to amend the Texas Department of Health Rules for Special Waste from Health Care Related Facilities, and, if needed, will work closely with the Texas Natural Resource Conservation Commission to revise its rules;

(B) provide the Texas Natural Resource Conservation Commission with a listing of the approved alternative treatment technologies by manufacturer, model identification, and other specifics as needed;

(C) upon request, provide the Texas Natural Resource Conservation Commission with documentation provided by the manufacturers of commercially-available technologies, equipment, or processes approved for the treatment of special waste from health care- related facilities; and

(D) provide the Texas Natural Resource Conservation Commission with a listing of the waste categories that may be treated with each approved alternative technology.

(c) Disclaimer. This Memorandum of Understanding is being entered into by the Texas Natural Resource Conservation Commission and the Texas Department of Health, and is not intended to affect the jurisdiction of any other governmental entities.

Adopted April 5, 1995

Effective May 3, 1995

Addition of new §330.735

Date Adopted: April 5, 1995

Date Filed with the Secretary of State: April 18, 1995

Date Effective: May 3, 1995